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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.2407 of 2019 and 1899 of 2020
and
C.M.P.No.14055 of 2020 in C.M.A.No.1899 of 2020

C.M.A.No.2407 of 2019

Arumugam
S/o.Jayaraman

... Appellant/Claimant

vs

1. Vijayakumar
S/o.Sengoda

2. The New India Assurance Company Ltd.,
Motor TP HUB,
Mochi Complex,
No.179, Jawaharlal Nehru Salai,
Pondicherry.

... Respondents/Respondents

C.M.A.No.1899 of 2020

The Branch Manager,
New India Assurance Co. Ltd.,
Motor DB-Hub, Mochi Complex,
No.179, Jawaharlal Nehru Road,
Pondicherry.

... Appellant/2nd Respondent

vs

1. Arumugam
S/o.Jayaraman

1st Respondent/Claimant

2. Vijayakumar
S/o.Sengoda

... 2nd Respondent/1st Respondent



Common Prayer: Civil Miscellaneous Appeals filed u/s.173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 01.11.2018 passed in M.C.O.P.No.536 of 2017 on the file of learned III Additional District and Sessions Judge, Motor Accident Claims Tribunal, Cuddalore, Vridhachalam.

Appearance:

Appellant in C.M.A.No.2407/2019 &
first respondent in C.M.A.No.1899/2020 : Mr.K.Suryanarayanan
for Mr.S.Udhayakumar

Appellant in C.M.A.No.1899/2020 &
second respondent in C.M.A.No.2407/2019 : Mr.J.Chandran

First respondent in C.M.A.No.2407/2019 &
second respondent in C.M.A.No.1899/2020 : Mr.A.Manoj Kumar

COMMON JUDGMENT

[Judgment of the Court was delivered by R.SUBBIAH, J]

These matters are heard through Video-Conferencing.

2. For the sake of convenience, parties are referred to as 'Insurance Company' and 'Claimant'.

3. Not being satisfied with the quantum of compensation awarded by the Tribunal in and by its judgment and decree dated 01.11.2018 passed in M.C.O.P.No.536 of 2017 on the file of learned III Additional District and Sessions Judge, Motor Accident Claims Tribunal, Cuddalore, Vridhachalam, Claimant has filed C.M.A.No.2407 of 2019. Questioning the quantum of compensation awarded in the very same judgment, Insurance Company has filed C.M.A.No.1899 of 2020.

4. The brief facts of the case are as follows:

On 02.08.2017 at about 03.00 p.m., while the claimant was working in the paddy field, a Tractor bearing Registration No.TN-32-AY-4837, belonging to first respondent in C.M.A.No.2407 of 2019 and insured with the Insurance Company, driven by its driver in a rash and negligent manner and hit the claimant, as a result of which the claimant fell down and the wheel of the Tractor ran over his right hand. In the accident, the right hand of the claimant was crushed. Immediately, the claimant was taken to Mahatma Gandhi Hospital, Pondicherry and thereafter, admitted in Abirami Hospital, Cuddalore, as an in-patient and his right hand was amputated above elbow. Hence, claimant filed a claim



petition seeking compensation in a sum of Rs.50,00,000/-.

5. The claim petition was resisted by Insurance Company denying the averments made in the claim petition.

6. To prove his claim, on behalf of claimant, the claimant examined himself as PW-1 and 14 documents were marked as Exs.P1 to P14. On the side of Insurance Company, none were examined and no exhibits were marked.

7. On appreciation of materials and the entire evidence on record, the Tribunal arrived at a finding that the accident had occurred owing to the rash and negligent driving of the Tractor bearing Registration No.TN-32-AY-4837 and held that the Insurance Company, as insurer of the said vehicle, is liable to pay compensation. Accordingly, the Tribunal awarded a sum of Rs.27,36,555/- as compensation. The break-up details are as follows:

Sl. No.	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of Income	25,70,400/-
2.	Pain and suffering	50,000/-
3.	Future Medical expenses	50,000/-
4.	Medical expenses	31,155/-
5.	Nutrition	15,000/-
6.	Attender charges	10,000/-
7.	Transport expenses	10,000/-
	Total	27,36,555/-

The said sum was directed to be paid together with interest at 7.5% p.a. from the date of claim petition till the date of realisation.

8. Learned counsel for Insurance Company submits that the accident had occurred in a private place i.e. paddy field. At the time of accident, the petitioner was collecting straws in the agricultural field. While he was so doing, by negligence, his right hand came into contact with the straw curling machine, as a result of which his right hand was crushed and thereafter, he was admitted at hospital, wherein his right hand was amputated above elbow. Therefore, it is clear that the accident had occurred only due to the negligence of the claimant.



Moreover, the accident had occurred in a private place. If at all, the claimant is eligible for compensation, he ought to have filed a claim petition under the Employee's Compensation Act, 1923 and not under the Motor Accident Claims Cases. The Tribunal, on that ground alone, ought to have dismissed the claim petition. Submitting as above, learned counsel prays for setting aside the impugned award.

9. On the other hand, learned counsel for claimant made his submissions supporting the award passed by the Tribunal. The alternate submission of learned counsel is that if this Court comes to the conclusion that the accident had occurred during the course of employment, then this Court may award compensation under the Employee's Compensation Act, 1923.

10. This Court has considered the rival submissions and perused the materials on record.

11. On a perusal of records, this Court finds that the accident had occurred while the claimant was collecting straws in the paddy field i.e. in the course of his employment. While he was collecting straws, his right hand came into contact with the straw curling machine. As a consequence of the accident, the right hand of the claimant above elbow was amputated. Since the accident had occurred while he was in employment, the claimant is not entitled to claim compensation under the Motor Accident Claim Cases. Instead, the claimant can claim compensation under the Employee's Compensation Act, 1923. However, this Court is of the opinion that if the claimant is directed now to approach the authority under the Employee's Compensation Act, 1923, it would lead to further delay in getting compensation. Therefore, this Court is of the view that the compensation awarded by the Tribunal could be modified to one payable under the Employee's Compensation Act. Accordingly, the compensation payable would be:

(a) Age at the time of accident:	27
(b) Age factor	: 213.57
(c) Loss of earning capacity	: 80%
(d) Monthly salary	: Rs.8,000/-
(e) Compensation	: Rs.8,20,108.80/-
	(213.57*60%*80%*8000)

As per the Section 4-A of the Employee's Compensation Act, 1923, the interest payable would be 12% p.a. from 03.08.2017 (one month after the date of accident) till the date of deposit.

In the result,

(i) C.M.A.No.2407 of 2019 is dismissed.

(ii) C.M.A.No.1899 of 2020 is partly allowed. The compensation of Rs.27,36,555/- awarded by the Tribunal is hereby reduced to



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Rs.8,20,108/- [Rupees Eight Lakhs Twenty Thousand One Hundred and Eight only]. The Insurance Company is directed to deposit the modified compensation of Rs.8,20,108/-, less the amount already deposited, together with interest at 12% p.a. from 03.08.2017 (one month after the date of accident) till the date of deposit, within a period of four weeks from the date of receipt of this judgment. On such deposit being made, claimant is entitled to withdraw the same by filing appropriate application before the Tribunal.
No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

gm

To

1. The III Additional District and Sessions Judge,
Motor Accident Claims Tribunal,
Cuddalore, Vridhachalam.
2. The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.J.Chandran, Advocate, S.R.No.19508

+1cc to Mr.A.Manojkumar, Advocate, S.R.No.19248

+1cc to Mr.S.Udayakumar, Advocate, S.R.No.19402

C.M.A.No.2407 of 2019 and 1899 of 2020

SV(CO)
SU(28/10/2021)